

APPLICANT:
Coscan/Adler Limited Partnership

REQUEST: A special exception and variance
to allow a condominium/apartment development
on less than 5 acres in a B3 District

HEARING DATE: March 2, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5466

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Coscan/Adler Limited Partnership

LOCATION: Enfield Road and Pulaski Highway (U. S. Route 40), Joppa
Tax Map: 64 / Grid: 3F / Parcel: 162 / Lots: 165, 166, 167 and 168
First Election District (1st)

ZONING: B3 / General Business District

REQUEST: A special exception pursuant to Section 267-53F of the Harford County Code to allow a condominium/apartment development in a B3 District and a variance pursuant to Section 267-53F(1)(a) to allow a condominium/apartment development on less than 5 acres in a B3 District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant testified David Adler, President of the General Partner of Coscan/Adler Limited Partnership. Mr. Adler described the subject property as being located off Route 40, in Joppa, Maryland, directly between Route 40 and the Gunpowder Pointe subdivision. The property is actually composed of two parcels, 3.6 acres on the northeast side of Enfield Road, and an .8 acre parcel on the southwesterly side of Enfield Road. The two parcels are separated by Enfield Road. The front part of the subject property lies at approximately the same elevation as the travel portion of Route 40, and then rises steeply back to the Gunpowder Pointe Subdivision to the rear.

Mr. Adler stated that to the west of the parcels lies an existing apartment complex; to the east is B3 zoned land on which are constructed single family homes; to the north is Route 40; and to the south the Gunpowder Pointe subdivision.

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The subject property itself is zoned B3/General Business District. The Applicant purchased the subject property, as part of a larger parcel, in 1993. Since that time the Applicant has attempted to unsuccessfully market these two remainder pieces. Their suitability for development is limited by Route 40 access restrictions. There is no medium break off Route 40 at the intersection of Enfield Road and Route 40. This limits the accessibility of the site. The owner has concluded that as a result potential commercial development is not a viable use. It is not a strong commercial development candidate. There also exists, in Mr. Adler's opinion, a certain amount of neighborhood opposition to the development of the property commercially. Accordingly, the owner decided to develop the property residentially, and has developed a plan which shows a total of 80 condominium units in 4 buildings, shown on the Applicant's site plan.

The Applicant has the support of the Gunpowder Pointe Home Owners Association, according to Mr. Adler. He relied upon a letter (marked as Applicant's Exhibit 14), from the Gunpowder Pointe Home Owners Association, Robert Jordan, President. That letter expressed support for the proposed development of the subject property as condominiums provided they be no more than four stories tall and consist of twelve or sixteen unit buildings, with eighty in total. That letter contained various assumptions upon which the favorable opinion was based, including the right to review the final set of Condominium Declarations. The Association also desires certain representations that parking would not take place on Enfield Road.

Mr. Adler, on behalf of the Applicant, agreed with most of the comments contained in the letter. He believes that the use would be compatible with other uses in the community.

In order to develop its proposed use, the Applicant is also asking for a variance from the 5 acre minimum lot size. The Applicant would have had close to 5 acres if not for the creation of Enfield Road through the original center of the parcel. If this variance were denied Mr. Adler believes the Applicant would face serious difficulty in developing the site for other allowable uses.

Next for the Applicant testified James Keefer, a Senior Landscape Architect for Morris & Ritchie Associates. Mr. Keefer was accepted as an expert landscape architect. Mr. Keefer indicated that the subject property has high intensity classification on the Harford County Land Use Plan. While Mr. Keefer did not do the earlier designs for the various commercial uses proposed for the property, he does support Mr. Adler's argument that the property has no viable commercial potential. Mr. Keefer feels that the property can be properly screened from adjoining uses, and that the structures will be architecturally compatible with the Gunpowder Pointe Subdivision. He sees no unsafe traffic conditions as a result. The dedicated portion of Enfield Road is about .49 acres in size.

Mr. Keefer described the site as being bisected by Enfield Road, and steeply sloping upwards in the rear. The subject property is relatively narrow and wide, and adjoins R3 zoned property to the rear. The subject property has very limited access to Route 40. Mr. Keefer agreed that the Applicant would suffer practical difficulty if the variance were not granted.

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Next for the Harford County Department of Planning and Zoning testified Nancy Lipski. Ms. Lipski, echoing the findings of the Staff Report, believes the property to be unique as it is bisected by Enfield Road. The back portion of the property rises steeply to Gunpowder Pointe subdivision which would make it difficult to screen that residential subdivision from any potential commercial uses on the subject property. Ms. Lipski believes for that reason commercial development would not be positive for the community. She feels there would be no adverse impact to the adjoining properties if the special exception and variance were granted.

In opposition testified Vestina Lingham who resides at 306 Joppa Crossing Way, Joppa, Maryland. Mrs. Lingham purchased her single family home in 1998. It backs up to the subject property, and would overlook the condominiums if built. At the time she purchased her property Mrs. Lingham was told nothing would be built on the subject property. If she had known about the proposed development she would not have purchased her home. Her view will be of the back of the condominiums. She now has a good, unobstructed view, and she does not want to look at this particular use.

Ms. Lingham is also concerned about overflow parking, particularly including along Enfield Road. She believes this would cause a problem to motorists along Enfield Road. Primarily, however, she does not want to look down at a set of condominium buildings. Mrs. Lingham's residence is three houses in from Enfield Road.

There was no other testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-53F of the Harford County Code states:

“Residential uses.

(1) Apartments, dwellings, garden, mid-rise and high-rise. These uses may be granted to the R4 and B3 Districts.

(a) A minimum parcel area of not less than five (5) nor more than fifteen (15) acres shall be established.

(b) The density shall not exceed twenty (20) dwelling units per acre for mid-rise apartments and thirty (30) dwelling units per acre for high-rise apartments, and the maximum building coverage shall be forty percent (40%) of the total parcel for mid-rise apartments and thirty percent (30%) of the total parcel for high-rise apartments.

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- (c) *The location is suitable for apartment dwellings with regard to traffic, access, efficiency and convenience of land use and safety.*
- (d) *The proposed project is designed with properly arranged traffic flow and parking, buildings which are compatible and harmonious with surrounding uses, minimum obstruction to the view of those who live in the surrounding area and no adverse effect upon adjoining or surrounding properties.*
- (e) *The open space shall constitute at least thirty-five percent (35%) of the parcel area, of which at least forty percent (40%) shall be suitable for and devoted to active recreation.*
- (f) *Any area not used for buildings, structures or parking shall be landscaped and properly maintained.*
- (g) *In the B3 District, apartment dwelling structures shall be able to provide retail and service uses primarily intended for the future residents to the extent of one thousand (1,000) square feet of gross floor area for every one hundred (100) dwelling units within the project. Business uses shall be located on only the first two (2) floors of any building. No more than one (1) restaurant or bar shall be permitted. No freestanding signs advertising the business uses shall be allowed.”*

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*

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(2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Section 267-9I, Limitations, Guides and Standards, is also applicable to this request and will be addressed below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant requests a special exception to allow the construction of a condominium community to be known as “Joppa Crossing”. Joppa Crossing will consist of five, elevated four story high units, containing a total of eighty condominium units. Eighty units will require a total of one hundred sixty parking spaces. The Applicant shows a total of one hundred sixty parking spaces on site. The property, however, is approximately 4.46 acres in size, which is slightly more than one-half acre less than the minimum lot size required for such a project in this B3 district. Accordingly, a variance to the minimum lot size requirement is also requested.

Evidence of record indicates that the subject property has limited commercial development potential primarily because of its restricted access to Route 40. The site plan shows a right out only on the northern side of the property, with the only access being from Enfield Road. Enfield Road itself is right in and right out only. This limited access is compounded by a lack of a medium break on U.S. Route 40. The testimony of the Applicant and their witnesses is persuasive, and it is found that the access/egress issues are sufficient to significantly limit potential uses of the property.

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Furthermore, and perhaps more importantly, the property adjoins to its rear, or southeasterly side, a fairly intensely developed residential subdivision. Because of the elevations between the subject property and the residential subdivision in the rear, the residents of the residential subdivision (Gunpowder Pointe) look down onto the subject parcel and would be forced to look down and into any improvements which are made on that parcel. While screening can be constructed between the two parcels, the extreme steepness of the slope in the area at which the two parcels adjoin will impact the usefulness of that screening, particularly in early years before plantings have had an opportunity to obtain full growth. It would therefore appear, and it is so found, that the most appropriate use of the subject parcel in order to protect the surrounding subdivision is residential, not commercial. Such a finding is not intended to ignore or minimize the testimony of Vestina Lingham, who persuasively argued about the impact any proposed improvements of the subject parcel will have on the view from her property. However, it would seem that a well designed and constructed residential subdivision would be more attractive and less intrusive to Mrs. Lingham and her neighbors than would be a commercial use.

In order to be granted a variance to the minimum 5 acre lot size requirement the Applicant must show, first of all, that practical difficulty or hardship would result because of some uniqueness of the property or “its’ topographical conditions”. Both the Applicant and the Department of Planning and Zoning believe the property is unique. Enfield Road is constructed directly through the property to service an adjoining residential subdivision. The subject property is long and narrow and has limited access to U.S. Route 40. These physical characteristics severely limit the property’s development potential and are characteristics not shared by other surrounding properties. The elevations of the subject property in relation to the surrounding residential subdivision also add to its unique character. The result of these features is a difficulty, if not outright inability, to construct a viable commercial subdivision without significantly detracting from the adjoining residential subdivision. The granting of the variance would not harm any surrounding property owner, and would have no adverse consequences. Again, the Hearing Examiner is mindful of Mrs. Lingham’s testimony as to impact. However, the Hearing Examiner finds that said impact will be one that is acceptable with proper conditions, and is nevertheless much less harmful than most other principally permitted uses.

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The Applicant's request for a condominium/apartment dwelling in a B3 District is a special exception under the Harford County Zoning Code. As such, it is a use which is presumed to be compatible with other uses principally permitted in that particular zoning district, provided the specific requirements of the particular special exception are met. Those requirements are addressed as follows:

Section 267-53F(1):

F. Residential uses.

- (1) Apartments, dwellings, garden, mid-rise and high-rise. These uses may be granted to the R4 and B3 Districts.*

The property is zoned B3/General Business District.

- (a) A minimum parcel area of not less than five (5) nor more than fifteen (15) acres shall be established.*

The Applicant has approximately 4.468 acres available, in two parcels, bisected by an approximately half acre parcel which is the roadbed of Enfield Road. For the reasons discussed above, the Applicant's request for a variance to the 5 acre minimum lot size is approved.

It should be noted that Section 267-53F(1)(a) requires that the property be a "parcel". This is of some concern as the subject property is actually divided into two pieces. However, a review of the Development Regulations at Section 267-4 finds that "parcel" is defined as **"Any contiguous area, site or portion of land under common ownership."**

A further review of the definitional section of the Code finds that contiguous is also defined as follows: **"Parcels of land which abut or are in close proximity to one another."** While the two pieces of the subject property do not abut, they are certainly in "close proximity" to one another only being separated by the roadway of Enfield Road. It is therefore found that the subject property does constitute, as defined under the Harford County Development Regulations, one parcel. Accordingly, this section is met.

- (b) The density shall not exceed twenty (20) dwelling units per acre for mid-rise apartments and thirty (30) dwelling units per acre for high-rise apartments, and the maximum building coverage shall be forty percent (40%) of the total parcel for mid-rise apartments and thirty percent (30%) of the total parcel for high-rise apartments.*

The density of the project is eighty units, or less than twenty units per gross acre. According to the site plan, the building coverage is 18.8% which is considerably less than the Code maximum.

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- (c) *The location is suitable for apartment dwellings with regard to traffic, access, efficiency and convenience of land use and safety.*

As discussed above, the property would appear to be an appropriate one for the proposed use, adjoining as it does a relatively high intensity residential subdivision to its rear. In many regards, the proposed use would be an ideal one for the subject property, given the character of the adjoining neighborhood.

- (d) *The proposed project is designed with properly arranged traffic flow and parking, buildings which are compatible and harmonious with surrounding uses, minimum obstruction to the view of those who live in the surrounding area and no adverse effect upon adjoining or surrounding properties.*

The project should have no impact on the traffic along either Route 40 or Enfield Road. There were legitimate concerns raised about potential parking on Enfield Road. Enfield Road is a public street, and the Board of Appeals does not have the authority to direct Harford County to limit parking on Enfield Road. However, the project does meet the two parking spaces per unit minimum requirement of the Code, and without any further testimony or evidence it is found that such onsite parking is sufficient to minimize any potential impact on Enfield Road. Furthermore, as noted in the Staff Report, the proposed condominium development may very well generate less traffic than any likely commercial use of the subject parcel. Nevertheless, a condition of this approval will be to require the future Homeowner's Association to discourage parking by residents on Enfield Road.

- (e) *The open space shall constitute at least thirty-five percent (35%) of the parcel area, of which at least forty percent (40%) shall be suitable for and devoted to active recreation.*

According to the site plan, approximately 47.7% of the subject property shall be open space with approximately .62 acres devoted to active recreation. Accordingly, it is found that this requirement is met.

- (f) *Any area not used for buildings, structures or parking shall be landscaped and properly maintained.*

The Applicant's site plan indicates a 35 foot private buffer between the condominium project and the adjoining residential subdivision which would appear to be, primarily, the steep slope to the rear of the property. The site plan also shows proposed plantings as shade trees, flowering trees, evergreens and shrubs. While the details of the potential landscaping plan are typically reviewed and finally approved by the Harford County Department of Planning and Zoning during its final site plan review, it will be ordered as a condition of approval that the Applicant provide no less landscaping in quantity and kind than is shown on its site plan

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submitted in these proceedings. It will further be ordered, as a condition of approval, that a post and rail fence be constructed and maintained along the common property line with the Gunpowder Pointe properties.

- (g) *In the B3 District, apartment dwelling structures shall be able to provide retail and service uses primarily intended for the future residents to the extent of one thousand (1,000) square feet of gross floor area for every one hundred (100) dwelling units within the project. Business uses shall be located on only the first two (2) floors of any building. No more than one (1) restaurant or bar shall be permitted. No freestanding signs advertising the business uses shall be allowed.*

This section is not applicable as no retail or service uses are proposed.

Accordingly, it is found that the proposed special exception meets all of the specific requirements of Section 267-53F.

Nevertheless, the Applicant must further comply with the specific requirements of Section 267-9I, Limitations, Guides and Standards, which provide guidance in determining whether the use will have a real or potential adverse impact on the surrounding community features.

Accordingly, in determining the adverse impact of any potential use, the following must be examined:

- (1) *The number of persons living or working in the immediate area.*

The subject property is zoned B3 and is located within the development envelope. The subject property itself is designated as high intensity in the Harford County Land Use Map. Accordingly, and for reasons further discussed above, there should be no impact on the number of persons living or working in the immediate area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

As discussed above, primary access will be from Enfield Road which is right in and right out on from and onto Route 40. The property will also exit directly onto Route 40 by a right out only. Traffic generated from the proposal should be less than what would be expected from a commercial use of the site. Sidewalks will be extended to connect to the existing sidewalks along Enfield Road which should be a benefit to the pedestrian traffic in the area.

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- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

Many uses are permitted as a matter of right in this B3/General Business District. The type of residential use requested would appear to be more in conformity with the existing neighborhood than would many commercial uses. Accordingly, the proposal would appear to have no adverse impact on the growth of the neighborhood or community or the fiscal impact of the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed development should generate none of these impacts to any significant degree.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Joppa Volunteer fire Department will provide primary fire protection and emergency assistance. The property will be served by public water and sewer. The Applicant is required to arrange for trash collection with a private hauler.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is consistent with all generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified. To the extent such structures exist in the immediate area, there should be no adverse impact.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the intent of the 2004 Master Plan.

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- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No sensitive environmental features or opportunities for recreation and open space have been identified. However, there will be open space maintained on the subject property for the use of its residents.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Accordingly, a review of the Limitations, Guides and Standards, Section 267-9I shows no adverse impact.

Lastly, the use must be reviewed to determine whether its impact at the proposed location would cause an adverse effect upon adjoining and surrounding properties “. . . unique and different in kind or degree than that inherently associated with such use regardless of its location within the zone. . . ” See People’s Counsel of Baltimore County v. Mangione, 85 Md. App. 738 (1991).

As noted above, the legislative body has determined the proposed use to be generally compatible with other uses in this district. It is not whether this special exception will have any adverse effect, as certain adverse effects are to be expected. It is whether the adverse effects any particular location be greater than those normally associated with that particular use. See Eastern Outdoor Advertising Company v. Mayor and City Council, 128 Md. App. 294 (1999).

The denial of the requested special exception must be supported by evidence of record which would support a finding that the characteristics of the area would be diminished or changed in a harmful way. The proposed use must undermine the residential or historic character of the neighborhood. No evidence to support such a conclusion was submitted. Indeed, the record is virtually devoid of any evidence which would mitigate against the approval of the special exception, other than certain expressions of a relatively “vague and generalized expression of opinion” which are not sufficient to support a finding of denial. See Anderson v. Sawyer, 23 Md. App. 612 (1974).

Furthermore, any potential impact of the proposed use on the surrounding properties should be reduced by the imposition of conditions, discussed below, some of which are adopted from the letter submitted by the Gunpowder Pointe Home Owner’s Association, and are found to be reasonable and helpful in protecting the existing neighborhood.

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CONCLUSION:

It is accordingly recommended the requested special exception and variance be granted, subject to the following conditions:

1. The Applicants shall prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC).
2. The site plan submitted to the County shall be in general compliance with the site plan approved by the Board of Appeals.
3. The Applicants shall obtain all necessary permits and approvals for the proposed use.
4. A final landscaping plan/lighting plan shall be submitted to the Department of Planning and Zoning for review and approval with the site plan.
5. Landscaping shall include, at a minimum, the number, coverage and type of plantings as set forth on Applicant's site plan, which shall be further enhanced so as to screen to the extent reasonably possible the impact of the proposed use on the adjoining residents of Gunpowder Pointe.
6. The number of units shall be limited to 80.
7. A fence shall be established and maintained at the property line between the subject parcel and those homes of Gunpowder Pointe which adjoin the subject property. Said fence shall be a post and rail fence, or of a similar type construction, but not chain link.
8. There shall be no community pool.
9. The proposed Declaration of Covenants, Conditions and Restrictions for the proposed condominium project shall be reviewed by the officers of the Gunpowder Pointe Home Owners Association who shall be given a reasonable opportunity to comment.
10. Dumpsters and trash receptacles shall be screened from public view and the trash disposed of properly and regularly.
11. The name of the proposed subdivision shall be "Joppa Crossing", or some other name not similar to "Gunpowder Pointe".
12. The Declaration of Covenants, Conditions and Restrictions shall contain a prohibition against residents parking or storing vehicles on adjoining public roads.

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13. All lighting onsite shall be low level and focused on the subject property and not onto adjoining properties.
14. The facades of the condominium complex shall be brick and siding.

Date: April 13, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner